

STUDENT SYMPOSIUM:

THE PROPOSED OHIO CRIMINAL CODE—REFORM AND REGRESSION

The Proposed Ohio Criminal Code¹ represents a comprehensive revision of Ohio's substantive criminal laws. The scope of the reform effort includes not only the majority of sections in Title 29 of the present Revised Code but also selected criminal provisions throughout the other titles. Although each of the proposed provisions merits thorough examination, the articles comprising this symposium focus on five major topics worthy of special attention because of both the breadth of proposed change and the departure from model legislation and other recent criminal code revisions: *mens rea* (p. 354), affirmative defenses (p. 397), homicide (p. 422), theft (p. 471) and sentencing (p. 490). While the articles are oriented primarily toward legislative examination, the inclusion of legislative histories, discussions of Ohio case law and comparisons with laws of other jurisdictions will provide a unique source of value in interpreting the body of statutory law which will ultimately be enacted.

The need for extensive revision of Ohio's criminal laws was recognized formally by the Ohio House of Representatives in 1965 with the unanimous adoption of House Resolution Number 81² calling for "the Legislative Service Commission to make a comprehensive study of Ohio criminal law and procedures."³ Pursuant to this resolution a legislative Committee to Study Ohio Criminal Laws and Procedures⁴ was appointed which, with the assistance of the research staff of the Legislative Service Commission, concluded that a comprehensive revision of the Ohio Criminal Code was in order.⁵ The Committee also determined that the substantive criminal law, rather than the procedural law, should be the focal point of the revision effort.⁶ Subsequently, a Technical Committee to Study Ohio Crim-

¹ Final Report of the Technical Committee to Study Ohio Criminal Laws and Procedures, PROPOSED OHIO CRIMINAL CODE (1971). Throughout this symposium references will be made to the Technical Committee's Final Report as the Proposed Code. The substantive provisions of this Report were encompassed within the original legislation introduced to the House as HOUSE BILL NUMBER 511. Reference will also be made to the version of the Proposed Code as amended in SUBSTITUTE HOUSE BILL NUMBER 511. When there are substantial differences between the substitute and original proposal such differences will be discussed. In addition, occasional references will be made to a working draft for the SUBSTITUTE HOUSE BILL to emphasize the states of development in the Proposed Code as it progressed through the Ohio House of Representatives.

² H.R. NO. 81, 106th Ohio General Assembly (1965).

³ H. JOUR., 106th Ohio General Assembly 1225 (1965).

⁴ Hereinafter referred to as the Study Committee.

⁵ OHIO LEGISLATIVE SERVICE COMMISSION STAFF RESEARCH REPORT NO. 82, *Criminal Laws and Procedures: An Interim Report* at 5 (Feb. 1967).

⁶ *Id.* This was basically necessitated by the Modern Courts Amendment, OHIO CONST. art. IV, § 6 (adopted May 7, 1968), which gave the responsibility for promulgating rules of practice and procedure to the Ohio Supreme Court.

inal Laws and Procedures⁷ composed of legislators, law professors and various members of the Ohio bar, was selected to work with the research staff of the Legislative Service Commission in the revision effort and to make recommendations to the Study Committee.⁸ In March, 1971, the work of the Technical Committee and the research staff was completed and a report was issued.⁹ Included in the report was a proposed criminal code designed to provide a comprehensive revision of Ohio's substantive criminal law. The proposed code was prepared as a bill and introduced in the House of Representatives as House Bill Number 511 on March 31, 1971.¹⁰

The House Judiciary Committee considered the bill for almost a year, finally reporting it back to the House as a substitute bill with the recommendation that it be passed.¹¹ Substitute House Bill Number 511,¹² which contained several significant changes from the original bill, was debated and amended slightly on the floor of the House on March 21 and 22, 1972. By a vote of 72 to 14, this bill, as amended by floor action, was passed on March 22, 1972.¹³ On March 27, 1972, the substitute bill as amended was referred to the Senate Judiciary Committee for consideration; it remains before that committee as of this writing.¹⁴

Two overriding characteristics of the proposed code deserve immediate and serious attention. First, the combined effect of the substantive, *mens rea* and affirmative defense provisions will be an overcriminalization of culpable conduct. The following symposium articles dealing with *mens rea* and homicide, for example, demonstrate that more conduct as such will be criminal under the proposed code than under existing Ohio law. Moreover, these two articles point up the disturbing possibility that the new criminal code will define culpable mental states lowered in some instances to a level previously found in Ohio only in civil tort law. The tendency toward overcriminalization appears to be continued in the area of affirmative defenses, where, for example, the proposed code precludes a jury from even considering voluntary intoxication in its determination of the existence of requisite mental states.

The second overriding characteristic of the proposed code is found in its penalty provisions, which if enacted will make Ohio's prison sanctions among the longest in the United States. Moreover, this step away from the trend of other recently enacted criminal codes contradicts both current

⁷ Hereinafter referred to as the Technical Committee.

⁸ *Supra* note 4, at 5.

⁹ FINAL REPORT OF THE TECHNICAL COMMITTEE TO STUDY OHIO CRIMINAL LAWS AND PROCEDURES (1971).

¹⁰ H. JOUR., 109th Ohio General Assembly 9 (daily ed. Mar. 31, 1971).

¹¹ H. JOUR., 109th Ohio General Assembly 14 (daily ed. Mar. 14, 1972).

¹² Hereinafter referred to as SUB. H.B. No. 511.

¹³ H. JOUR., 109th Ohio General Assembly 9 (daily ed. Mar. 22, 1972).

¹⁴ S. JOUR., 109th Ohio General Assembly 1 (daily ed. Mar. 27, 1972).

penological theory and history's teachings on the effectiveness of punishment. As the following article on sentencing points out, the proposed provisions for maximum and minimum sentencing take considerable latitude from the courts and the Adult Parole Authority and reduce flexibility in application of prison sanctions even below the existing level of Ohio law. This tendency toward inflexibility is further illustrated by the absence from the proposed code of provisions for presentencing reports, but is limited somewhat by the provisions for "shock probation" and sentencing court latitude to reduce charge severity.

The tendencies of the proposed code toward overcriminalization and increased rigidity in application of prison sanctions will have far-reaching impact. For example, the departures from existing law and model legislation will present substantial difficulties of application in the courts. Given the present correctional system in Ohio, longer prison terms will probably do as much to foster crime as to prevent it. Moreover, the proposed longer prison sentences will result in an increased drain on state financial resources—expenses not demonstrated to produce desired results. It should not be overlooked that revision is needed and that the proposed code will in many ways codify and simplify the existing body of law, as the following article on theft offenses points out. The idea of improvement, however, is implicit in any task of revision. Close scrutiny of the Proposed Ohio Criminal Code reveals that the proposal, if enacted without amendment, will represent a regression of much of Ohio's substantive criminal law to a period very much out of touch with present concepts of desirable criminological objectives. The articles comprising this symposium suggest that the objectives of the General Assembly to reduce crime through effective administration and judicial action, to provide for the safety of citizens and property, will not be realized by the Proposed Code in its present form.